

AMENDED IN ASSEMBLY APRIL 20, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2189**

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**Introduced by Assembly Member Blakeslee**

February 22, 2006

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An act to amend Section 399.12 of the Public Utilities Code, relating to energy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2189, as amended, Blakeslee. Energy: renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each electrical corporation to increase its total procurement of eligible renewable energy resources

by at least an additional 1% of retail sales per year over its baseline amount so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017. Pursuant to the existing definition of an “eligible renewable energy resource,” the electricity generated by a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of January 1, 2003, is eligible only for purposes of establishing the baseline of renewable energy resources procured by the electrical corporation and not for purposes of meeting the renewables portfolio standard.

This bill would make the incremental amount of electricity generated by an existing small hydroelectric generation facility resulting from efficiency improvements at the facility undertaken after January 1, 2003, eligible to meet the renewables portfolio standard. The bill would provide that a small hydroelectric generation facility that is an eligible renewable energy resource retains eligibility if, ~~as a result of~~ efficiency improvements at the facility undertaken after January 1, 2003, *cause the generating capacity of the facility exceeds to exceed 30 megawatts, and the facility does not require a new or increased appropriation or diversion of water, as defined.* The bill would provide that the incremental increase in the amount of electricity generated from an existing hydroelectric generation facility *that has received a water quality certification or exemption from the State Water Resources Control Board within the previous 15 years,* regardless of size, that results from efficiency improvements for which there is no new or increased appropriation or diversion of water, is electricity from an “eligible renewable energy resource.” The bill would provide that an existing conduit hydroelectric facility, as defined, of 30 megawatts or less is eligible for purposes of establishing a retail seller’s baseline quantity of eligible renewable energy resources and that a new conduit hydroelectric facility of 30 megawatts or less is an “eligible renewable energy resource” if it does not require a new or increased appropriation or diversion of water pursuant to a specified law. The bill would make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings:

(a) “Eligible renewable energy resource” means an electric generating facility that meets the definition of “in-state renewable electricity generation facility” in Section 25741 of the Public Resources Code, subject to the following conditions or exceptions:

(1) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller’s baseline quantity of eligible renewable energy resources except for electricity certified as incremental geothermal production by the Energy Commission, if the incremental electricity was not sold to an electrical corporation under contract entered into prior to September 26, 1996. For each facility seeking certification, the Energy Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining geothermal output of existing steamfields and the contribution of capital investments in the facility or wellfield.

(2) (A) A small hydroelectric generation facility of 30 megawatts or less generating capacity that is procured or owned by a retail seller as of January 1, 2003, shall be eligible for purposes of generating electricity that contributes to the baseline of the retail seller pursuant to this article. A small hydroelectric generation facility that is an eligible renewable energy resource shall retain eligibility if, ~~as a result of efficiency improvements at the facility undertaken after January 1, 2003, the generating capacity of the facility exceeds 30 megawatts.~~ *eligibility if efficiency improvements undertaken after January 1, 2003, cause the generating capacity of the facility to exceed 30 megawatts, and the facility does not require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.*

(B) A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation

1 or diversion of water under Part 2 (commencing with Section  
2 1200) of Division 2 of the Water Code.

3 (C) The incremental increase in the amount of electricity  
4 generated from an existing hydroelectric generation facility,  
5 ~~regardless of size, that results from efficiency improvements for~~  
6 ~~which there is no new or increased appropriation or diversion of~~  
7 ~~water, is electricity from an “eligible renewable energy~~  
8 ~~resource,” and shall be eligible for purposes of meeting the~~  
9 ~~procurement requirements of this article. regardless of size, is~~  
10 ~~electricity from an “eligible renewable energy resource” and~~  
11 ~~shall be eligible for purposes of meeting the procurement~~  
12 ~~requirements of this article, if both of the following are true:~~

13 (i) *The incremental increase is the result of efficiency*  
14 *improvements for which there is no new or increased diversion of*  
15 *water under Part 2 (commencing with Section 1200) of Division*  
16 *2 of the Water Code.*

17 (ii) *The hydroelectric generation facility has received a water*  
18 *quality certification or exemption from the State Water*  
19 *Resources Control Board within the previous 15 years.*

20 (D) Notwithstanding subparagraph (A), an existing conduit  
21 hydroelectric facility of 30 megawatts or less, as defined by  
22 Section 823a of Title 16 of the United States Code, shall be  
23 eligible for the purposes of establishing a retail seller’s baseline  
24 quantity of eligible renewable energy resources. A new conduit  
25 hydroelectric facility of 30 megawatts or less, as defined by  
26 Section 823a of Title 16 of the United States Code, shall be an  
27 eligible renewable energy resource if it does not require a new or  
28 increased appropriation or diversion of water under Part 2  
29 (commencing with Section 1200) of Division 2 of the Water  
30 Code.

31 (3) A facility engaged in the combustion of municipal solid  
32 waste shall not be considered an eligible renewable resource  
33 unless it is located in Stanislaus County and was operational  
34 prior to September 26, 1996. Electricity generated by a facility  
35 meeting these requirements shall be eligible only for the purpose  
36 of adjusting a retail seller’s baseline quantity of eligible  
37 renewable energy resources.

38 (b) “Energy Commission” means the State Energy Resources  
39 Conservation and Development Commission.

1 (c) *“New or increased appropriation or diversion of water*  
2 *under Part 2 (commencing with Section 1200) of Division 2 of*  
3 *the Water Code” means a change in the stream flow regime that*  
4 *requires a new application pursuant to Sections 730 and 799 of*  
5 *Title 23 of the California Code of Regulations.*

6 ~~(e)–~~

7 (d) “Retail seller” means an entity engaged in the retail sale of  
8 electricity to end-use customers, including any of the following:

9 (1) An electrical corporation, as defined in Section 218.

10 (2) A community choice aggregator. The commission shall  
11 institute a rulemaking to determine the manner in which a  
12 community choice aggregator will participate in the renewables  
13 portfolio standard subject to the same terms and conditions  
14 applicable to an electrical corporation.

15 (3) An electric service provider, as defined in Section 218.3  
16 subject to the following conditions:

17 (A) An electric service provider shall be considered a retail  
18 seller under this article for sales to any customer acquiring  
19 service after January 1, 2003.

20 (B) An electric service provider shall be considered a retail  
21 seller under this article for sales to all its customers beginning on  
22 the earlier of January 1, 2006, or the date on which a contract  
23 between an electric service provider and a retail customer  
24 expires. Nothing in this subdivision may require an electric  
25 service provider to disclose the terms of the contract to the  
26 commission.

27 (C) The commission shall institute a rulemaking to determine  
28 the manner in which electric service providers will participate in  
29 the renewables portfolio standard program. The electric service  
30 provider shall be subject to the same terms and conditions  
31 applicable to an electrical corporation pursuant to this article.  
32 Nothing in this paragraph shall impair a contract entered into  
33 between an electric service provider and a retail customer prior to  
34 the suspension of direct access by the commission pursuant to  
35 Section 80110 of the Water Code.

36 (4) “Retail seller” does not include any of the following:

37 (A) A corporation or person employing cogeneration  
38 technology or producing electricity consistent with subdivision  
39 (b) of Section 218.

1 (B) The Department of Water Resources acting in its capacity  
2 pursuant to Division 27 (commencing with Section 80000) of the  
3 Water Code.

4 (C) A local publicly owned electric utility as defined in  
5 subdivision (d) of Section 9604.

6 ~~(d)~~

7 (e) “Renewables portfolio standard” means the specified  
8 percentage of electricity generated by eligible renewable energy  
9 resources that a retail seller is required to procure pursuant to this  
10 article.